

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

New Hope Academy Charter School,	:	
Petitioner	:	
	:	
v.	:	Docket No. 2012-13
	:	
City of York School District,	:	
Respondent	:	

OPINION

HISTORY

In accordance with the Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, *as amended*, 24 P.S. §17-1701-A *et seq.* (hereinafter “CSL”), this matter comes before the Pennsylvania State Charter School Appeal Board (hereinafter “CAB”) on the appeal by New Hope Academy Charter School (hereinafter “New Hope”) from the August 15, 2012 Adjudication (hereinafter “Adjudication”) by the Board of School Directors of the School District of the City of York (hereinafter “the School Board”) which did not renew New Hope’s charter.

New Hope has been in operation since 2007, when the School District of the City of York (hereinafter “York,” or “the School District”) granted a charter to it for a five-year term ending on June 30, 2012. On January 30, 2012, York sent a letter to New Hope stating that it did not intend to renew New Hope’s charter. On February 16, 2012, York issued an Amended Nonrenewal Notice setting forth a revised set of reasons for nonrenewal. Public hearings on the nonrenewal, at which both York and New Hope were afforded a full opportunity to be heard,

were held on February 23 and 29, 2012 and on March 1, 6, 8, 13, and 19, 2012. York also scheduled a public comment period.

On June 25, 2012, the parties submitted proposed findings of fact and conclusions of law to the School Board. The parties also supplemented the record on June 29, 2012. At the conclusion of the process, on July 18, 2012, at a public meeting, the School Board voted not to renew New Hope's charter. On August 15, 2012, the School Board issued an Adjudication in which it set forth the reasons for the nonrenewal.

On October 1, 2012, New Hope filed a Petition to Appeal Nonrenewal of Charter with CAB. On October 19, 2012, York School District filed its Answer and also filed a Motion to Quash the appeal. After the filing of Memoranda of Law in support and in opposition thereto, the parties argued the Motion to Quash before CAB on December 11, 2012. On March 21, 2013, CAB issued an Order denying the School District's Motion to Quash.

After consideration of motions made by both parties to supplement the record, on June 14, 2013, the Hearing Officer issued an Order establishing the documentary record in this matter. Both parties stated that an evidentiary hearing was not necessary, but they requested oral argument before CAB.

On June 12, 2013, the York County Education Association (hereinafter "YCEA") submitted to CAB a Petition in support of the decision of the School Board denying the renewal of the charter issued to New Hope. The Petition requests CAB to consider employee and community opposition to the charter school, pursuant to Section 17-1729-A(d) of the Charter School Law, 24 P.S. §17-1729-A(d), which provides that CAB may consider employee and community support for the charter school in addition to the record.

On July 26, 2013, New Hope filed a Motion to Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document under Section 17-1729-A(d). York opposed the motion, arguing that the hearing officer had already decided to exclude these exact two documents from the record in his June 14, 2013 Order. By letter dated August 7, 2013, New Hope stated that this motion was before CAB, not before the hearing officer.

The parties filed briefs in support of their respective positions on appeal. They also presented their arguments to CAB on September 24, 2013. The record was certified on October 15, 2013. For the reasons set forth below, CAB holds that the nonrenewal of New Hope's charter was proper.

FINDINGS OF FACT

1. New Hope's original charter was granted by York School District for a five-year term beginning July 1, 2007 and ending on June 30, 2012. Joint Stipulation ¶1.¹
2. During the term of the charter, New Hope applied for, and York granted, three amendments to the charter which expanded New Hope's curriculum and enrollment by adding sixth grade, fifth grade, and a performing arts program. York granted the most recent amendment request in November 2011. Joint Stipulation ¶1.
3. On January 30, 2012, the School Board sent a letter to New Hope indicating that it intended not to renew New Hope's charter and enclosing a document setting forth the School Board's preliminary reasons for nonrenewal. Joint Stipulation ¶2; Record at Exhibit A.²
4. On February 16, 2012, the School Board issued an Amended Nonrenewal Notice setting forth a revised set of reasons for nonrenewal. Joint Stipulation ¶3; Record at Exhibit B.

¹ "Joint Stipulation" refers to the Stipulation of Undisputed Facts filed by the parties on July 19, 2013.

² "Record at Exhibit ___" refers to the Exhibits in Volumes I through VI of the Reproduced Record filed by York on October 23, 2012.

5. The School Board held seven (7) duly advertised public hearings on the nonrenewal of New Hope's charter from February 23 through March 19, 2012. Joint Stipulation ¶4; Record at Exhibits C through I.³
6. Following receipt of all hearing transcripts, on or around June 25, 2012, counsel for York and counsel for New Hope submitted proposed Findings of Fact and Conclusions of Law to the School Board. Joint Stipulation ¶5; Record at Exhibits L, M.
7. On or about June 29, 2012, counsel for New Hope and York stipulated that an affidavit dated June 29, 2012 by Ms. Rebecca Perez and four Statements of Financial Interest would become part of the record. Joint Stipulation ¶6; Record at Exhibit O.⁴
8. On or about July 3, 2012, New Hope noted certain objections to the inclusion of various parts or portions of the School District's proposed findings of fact and conclusions of law. The School Board's counsel had indicated that the School Board would be permitted to consider these proposed findings in making its decision. Joint Stipulation ¶7; Record at Exhibit N.
9. The School District accepted public comment for at least 30 days prior to voting on the nonrenewal. Joint Stipulation ¶8; Record at Exhibit C, 2/23/20012 N.T. 5; Record at Exhibits Q and R.
10. On July 18, 2012, at a public meeting, the School Board voted not to renew New Hope's charter. Joint Stipulation ¶9; Record at Exhibit P.

³ Exhibits C through I of the Record contain the transcripts from each of the respective public hearings held by the District. References to the Notes of Testimony contained in the transcripts from a public hearing will be made by referencing the Exhibit from the Record filed on October 23, 2012, the date of the public hearing and the page on which the Notes of Testimony from that public hearing is found, for example, "Record at Exhibit __, [Date] N.T. __."

⁴ The four statements were completed by John Eyster (2007), David Graybill (2007), Hope Johnson (2008), and Benjamin Pratt (2008).

11. On August 15, 2012, the School Board issued a written Adjudication setting forth its decision and the asserted reasons for that decision. Joint Stipulation ¶10; Record at Exhibit S.
12. On October 1, 2012, New Hope filed a Petition to Appeal with CAB. Joint Stipulation ¶11.
13. On November 26, 2012, York filed a Motion to Quash the Petition to Appeal which CAB denied by Order dated March 21, 2013. Joint Stipulation ¶12.
14. On January 28, 2013, York filed a Motion to Supplement the Record which contained Exhibits A, B, and C. The additional information submitted by the School District was admitted to the record by Order dated May 21, 2013.⁵ Joint Stipulation ¶13; Official Notice - May 21, 2013 Order.
15. On May 21, 2013, Hearing Officer Henderson conducted a pre-hearing conference with the parties.
16. On May 31, 2013, New Hope filed a Motion and Submission of Additional Material to Supplement the Record, including a submission of material agreed upon by the parties (Exhibits 1-10) and additional materials (Exhibits 11-26) to which York objected.⁶ Joint Stipulation ¶14.
17. On June 14, 2013, Hearing Officer Henderson issued an Order establishing the record in this matter.⁷ Joint Stipulation ¶15; Official Notice - June 14, 2013 Order.

⁵ These Exhibits will be referred to as "Exhibit ___ of School District's 1/28/13 Motion to Supplement."

⁶ These Exhibits will be referred to as "Exhibit ___ of New Hope's 5/31/13 Motion to Supplement."

⁷ The June 14, 2013 Order established that the documentary record before CAB would consist of the following:

(a) Volumes I – VI consisting of Exhibits A, B, C, D, E, F, G, H, I, J-1 through J-51, K-1 through K-63, L, M, N, O, P, Q, R, S, T, U, and V submitted by the School District on October 23, 2012; (b) Exhibits A, B, and C submitted by the School District as part of its Motion to Supplement the Record filed on January 28, 2013;

(c) Exhibits 1-10 as stipulated to by the parties and attached to New Hope's Motion and Submission of Additional Material to Supplement the Record, filed on May 31, 2013; (d) Exhibits 16 and 17 in New Hope's Motion and

18. The June 14, 2013 Order held that Exhibits 11-15 and 18-26 attached to New Hope's 5/31/13 Motion to Supplement the Record were not made a part of the record in this matter, sustaining the objections thereto filed by York regarding those Exhibits. Official Notice - June 14, 2013 Order.
19. On June 21, 2013, Hearing Officer Henderson issued an Order establishing deadlines for filing statements regarding the hearing, stipulations of fact and briefs. Joint Stipulation ¶16; Official Notice - June 21, 2013 Order.
20. New Hope's brief was filed on July 26, 2013; York's brief was filed on August 26, 2013; and New Hope's reply brief was filed on September 9, 2013. Official Notice - CAB Docket.
21. On June 12, 2013, YCEA submitted to CAB a Petition in support of the decision of the School Board denying the renewal of the Charter issued to New Hope. Official Notice - CAB Docket.
22. On July 26, 2013, New Hope filed a Motion to Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document pursuant to Section 17-1729-A(d) of the Charter School Law, 24 P.S. §17-1729-A(d). Official Notice - CAB Docket.
23. On July 31, 2013, York filed its Answer to New Hope's Motion to Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document. Official Notice - CAB Docket.
24. On August 7, 2013, New Hope filed a letter response to York's Answer. Official Notice - CAB Docket.

Submission of Additional Material to Supplement the Record, filed on May 31, 2013, overruling the objections thereto filed by the School District. Official Notice - June 14, 2013 Order.

25. On September 24, 2013, the parties appeared before CAB to present argument in this matter. Official Notice.
26. New Hope did not make Adequate Yearly Progress (hereinafter "AYP") in 2012, and its status is now Corrective Action II. Exhibits A and B of School District's 1/28/13 Motion to Supplement.
27. The State proficiency target for the 2012 Pennsylvania System of School Assessment (hereinafter "PSSA") was 81% in Reading and 78% in Math. *Id.*
28. The overall percentages of New Hope students scoring proficient or better on the 2012 PSSA were 37% in Reading and 35% in Math. Exhibit C of School District's 1/28/13 Motion to Supplement.
29. The overall percentages of York School District students scoring proficient or better on the 2012 PSSA were 40% in Reading and 52% in Math. Exhibit 5 of New Hope's 5/31/13 Motion to Supplement.
30. The performance of students in grade 11 at New Hope declined from 2011 to 2012 as follows: in Reading from 26.6% in 2011 to 25% in 2012; and in Math from 17.7% in 2011 to 14% in 2012. Record at Exhibit C, 94-96; J-14; Exhibit C of School District's 1/28/13 Motion to Supplement.
31. The performance of students in grade 8 at New Hope declined in Reading from 50% in 2011 to 43% in 2012; but performance increased in Math from 36.5% in 2011 to 45% in 2012. Record at Exhibit C, 94-96; J-14; Exhibit C of School District's 1/28/13 Motion to Supplement.
32. For the fiscal years 2009-2010, 2010-2011 and 2011-2012, the only companies listed by New Hope in its Form 990s as its highest paid independent contractors for professional

services are three companies all owned by Isiah Anderson, the founder of New Hope, (hereinafter "Anderson"). They are Three Cord, Inc., Three Cord Youth Services, LLC, and I. Anderson Real Estate. Those three companies were paid a total of \$1,339,662 by New Hope in the fiscal year ending June 30, 2010, \$1,483,718 by New Hope in the fiscal year ending June 30, 2011, and \$2,418,568 by New Hope in the fiscal year ending June 30, 2012. Record at Exhibits J-23, p. 8; K-40, p. 8; Exhibit 6, p. 8 of New Hope's 5/31/13 Motion to Supplement.

33. Anderson owns Three Cord, Inc., which he incorporated as a for-profit company on February 5, 2007. He is the sole owner and stockholder of Three Cord, Inc. Anderson draws a salary from Three Cord, Inc. and takes all of its net income at the end of the year. Three Cord, Inc. derives income from various companies that Anderson owns including New Grounds Roasting Company, a coffee company; I. Anderson Real Estate; Three Cord Properties; Three Cord Youth Services d/b/a Challenge Academy (hereinafter "Challenge Academy"); and Impact Academy. In addition, Three Cord, Inc. derives income from the management fee paid to it by New Hope. Challenge Academy is organized as a partnership between Anderson and Robert Holbein, with Anderson's interest being 60% of the partnership. However, since July 2011, Holbein no longer has any interest in Challenge Academy. Record at Exhibit E, 3/1/12 N.T. 63, 66-69; Exhibit H, 3/13/12 N.T. 23.

34. New Hope is managed by Three Cord, Inc., and pursuant to a written agreement, New Hope pays a management fee to Three Cord, Inc. each month based on a percentage of gross school district revenue, which is 15% of gross local revenue, plus 50% of unrestricted net income. New Hope paid a total management fee to Three Cord, Inc. for

the year ending June 30, 2012 in the amount of \$1,545,252, which included the amount of \$313,614 representing the 50/50 net income split between Three Cord, Inc. and New Hope. Exhibit 7, p. 22 of New Hope's 5/31/13 Motion to Supplement.

35. New Hope places students in the Alternative Education for Disruptive Youth ("AEDY") programs run by Challenge Academy and Impact Academy. During the year ended June 30, 2012, New Hope paid \$638,142 to Challenge Academy and \$40,035 to Impact Academy for these services. However, New Hope continued to owe \$137,391 and \$11,484 to Challenge Academy and Impact Academy, respectively. Exhibit 7, p. 22 of New Hope's 5/31/13 Motion to Supplement.
36. New Hope's original building lease with I. Anderson Real Estate provides for the use of the building over a four-year term, commencing July 1, 2008 and terminating on July 30, 2012. The rental rate was \$16,500 per month over the course of the term. A lease amendment was executed during November 2011 which increased the square footage covered by the lease, extended the term for 20 years through December 31, 2031, and increased the monthly rent to \$53,392. The lease provides that the rental amount shall increase every five years based on a formula tied to the Consumer Price Index. New Hope's Financial Audit for year ending June 30, 2012 shows that \$640,704 is owed from New Hope to I. Anderson Real Estate for each year from fiscal year 2012-2013 through 2030-2031. New Hope also rents parking space on a month-to-month lease for \$2800 per month. Record at Exhibit 7, pp. 22-23 of New Hope's 5/31/13 Motion to Supplement.
37. New Hope reimbursed I. Anderson Real Estate for certain improvements to the school facility, including an upgrade to the electrical system, improvements to the gymnasium, and basketball court. These expenses amounted to \$84,425 in the current year. Exhibit

7, p. 22 of New Hope's 5/31/13 Motion to Supplement.

38. Fifteen Statements of Financial Interest were not produced for certain board members or charter school employees during certain years⁸. Record at Exhibit O.

39. While the original Management Agreement between New Hope and Three Cord, Inc., dated April 24, 2007, did not contain any provision permitting termination in the event that New Hope's charter was revoked or not renewed, the Amended and Restated Management Agreement dated November 10, 2011 does contain a provision permitting termination in the event that New Hope's charter is revoked or not renewed. Record at Exhibit K-46, p. 16.

40. Pursuant to the Amended and Restated Management Agreement dated November 10, 2011:

- a. If New Hope does not achieve AYP for two (2) years in a row, Three Cord, Inc. is required to present to New Hope's Board an intervention plan to address academic deficiencies, and if New Hope fails to achieve AYP for three (3) consecutive years, New Hope may elect to terminate the Agreement subject to the provisions in the Agreement;
- b. Three Cord, Inc. is responsible for the recruitment, screening and interview processes for all personnel of New Hope, including making specific hiring recommendations to the Board;
- c. New Hope must consult with Three Cord, Inc. before accepting any grants or donations that require implementation at the school;
- d. Three Cord is entitled to a minimum management fee equal to 15% of New Hope's gross revenues;
- e. If a budget surplus exists at the end of the school year, Three Cord, Inc. is entitled to a 50/50 split of the surplus;
- f. If New Hope fails to pay the fees required under the agreement within five (5) days of when they are due, there is a late payment fee of 10% compounded monthly until such funds, together with any accrued interest are paid to Three

⁸ The years and individuals were: 2007-Jennifer Washburn and Isaiah Anderson; 2008-David Graybill, John Eyster, Stephen Mitchell, Jennifer Washburn, Isiah Anderson, and Samuel Sutton; 2009-David Graybill, Isiah Anderson, and Samuel Sutton; 2010-Stephen Mitchell, John Eyster, Adrian Boxley, and Robert Cooper. Record at Exhibit O.

Cord, Inc.;

- g. If Three Cord, Inc. advances expenses to New Hope and they are not repaid within 90 days of the loan date, then interest accrues at the rate of 10% until the loan, with interest, is paid in full;
- h. Upon termination of the Management Agreement, New Hope is required to purchase from Three Cord, Inc. all of the technology, equipment and other personal property that Three Cord, Inc. required for purposes of managing New Hope; and
- i. Upon termination of the Management Agreement, New Hope is required to pay Three Cord, Inc. a yearly payment equal to \$300 multiplied by the number of students enrolled at New Hope during the school year in which the agreement expires or is terminated for 10 years following the termination.

Record at Exhibit K-46, ¶¶ 5.8, 7.2, 8.2, 9.1, 9.2, 9.4, 10.1(b), 14.3(c), 14.3(h).

41. CAB adopts and incorporates by reference as though fully set forth herein all the factual findings set forth in the School Board's Adjudication, Nos. 1 through 167 and 169 through 203, but not No. 168.

CONCLUSIONS OF LAW

- 1. CAB has jurisdiction of this matter. 24 P.S. § 17-1729-A.
- 2. The CSL governs the charter application/approval process, the revocation/renewal of charters and the operation of charter schools in Pennsylvania. 24 P.S. §17-1701-A *et seq.*
- 3. The intent of the General Assembly in enacting the CSL was, *inter alia*, to establish and maintain schools that improve pupil learning, to increase learning opportunities for all pupils, and to hold charter schools accountable for meeting measurable academic standards. 24 P.S. §17-1701-A.
- 4. At the end of the term of a charter, the local board of school directors of a school district (hereinafter "school board") may choose not to renew the charter of a charter school based on any of the following:

- (1) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 17-1720-A.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of this article.
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

24 P.S. § 17-1729-A(a).

5. The school board must give notice of nonrenewal of the charter to the governing board of the charter school, which notice must state the grounds for such action with reasonable specificity and must give reasonable notice of the date on which a public hearing concerning the written nonrenewal will be held. 24 P.S. § 17-1729-A(c).
6. The school board must conduct a hearing, present evidence in support of the grounds for nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. 24 P.S. § 17-1729-A(c).
7. The school board must take formal action regarding the nonrenewal of a charter school at a public meeting pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the

“Sunshine Act,” after the public has had thirty (30) days to submit comments to the school board. All proceedings of the school board pursuant to this subsection are subject to the Local Agency Law, 2 Pa.C.S. Ch.5 Subchapter B. 24 P.S. § 17-1729-A(c).

8. The York School Board complied with all the procedural requirements of the CSL set forth at Section 17-1729-A(c). 24 P.S. § 17-1729-A(c). Findings of Fact Nos. 3-11.
9. In determining whether a school board’s nonrenewal of a charter is appropriate, CAB shall give due consideration to the findings of the local board of school directors and specifically articulate reasons for agreeing or disagreeing with the board. 24 P.S. § 17-1729-A(d); *see also West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172, 1180, 571 Pa. 503, 516-17 (Pa. 2002).
10. In determining whether the nonrenewal of a charter was appropriate, CAB shall review the record made in the proceeding below and may supplement the record at its discretion with information that was previously unavailable. 24 P.S. § 17-1729-A(d).
11. In addition to the record, CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school. 24 P.S. § 17-1729-A(d).
12. Because the statutory standards for CAB’s review of charter nonrenewal decisions are the same as those for the review of charter denials, CAB shall make a *de novo* review of the School Board’s determination to not renew New Hope’s charter. *Compare* 24 P.S. § 17-1729-A(c) *with* 24 P.S. § 17-1717-A(i)(6); *West Chester, supra*, 812 A.2d at 1180, 571 Pa. at 516-17.
13. The School District has the burden of proof to present sufficient evidence to substantiate its reasons for nonrenewal. 24 P.S. § 17-1729-A(c).

14. The School District did meet its statutory obligation of presenting sufficient evidence to substantiate its reasons for nonrenewal under 24 P.S. § 17-1729-A(c).
15. New Hope failed to meet the requirements for student performance as set forth in 22 Pa. Code Ch. 4, and its subsequent regulations, and as set forth in New Hope's written charter. 24 P.S. § 17-1729-A(a)(2); 24 P.S. § 17-1702-A(6).
16. New Hope has materially violated the terms of its written charter by failing to meet the academic standards set forth therein. 24 P.S. § 17-1729-A(a)(1); 24 P.S. § 17-1702-A(6).
17. New Hope has materially violated the terms of its written charter by failing to follow the admission/enrollment policy in its charter and by amending its admission/enrollment policy without seeking an amendment to its charter from the School District. 24 P.S. § 17-1729-A(a)(1).
18. New Hope has violated laws governing the manner in which students should be enrolled in its charter school by seeking student records, including grade reports, special education records, disciplinary records and standardized test scores, from the School District before a student has been accepted for enrollment and then basing enrollment decisions on a review of such records. 22 Pa. Code § 11.11(b); 24 P.S. § 17-1729-A(a)(5).
19. New Hope has violated laws relative to the placement of students in AEDY programs without first obtaining Pennsylvania Department of Education (hereinafter "PDE") approval for placing students in the AEDY programs. 24 P.S. § 17-1729-A(a)(5).
20. New Hope has violated the laws governing truancy and student attendance reporting in that it habitually failed to timely provide information to the School District regarding student absences so that the compulsory attendance laws could be enforced. 24 P.S. § 17-1729-A(a)(5).

21. Trustees of a charter school are public officials. 24 P.S. § 17-1715-A(11).
22. A person who serves as an administrator for a charter school shall not receive compensation from another charter school or from a company that provides management or other services to another charter school. The term “administrator” shall include the chief executive officer of a charter school and all other employees of the charter school who by virtue of their positions exercise management or operational oversight responsibilities. A person who serves as an administrator for a charter school shall be a public official under the Public Officials and Employees Ethics Law (hereinafter “Ethics Act”). 65 Pa.C.S. §1101, *et seq*; 24 P.S. § 17-1715-A(12).
23. The Ethics Act requires public officials to file Statements of Financial Interest by May 1 of each year. Trustees of a charter school are required to file Statements of Financial Interest. *In re: Thurgood Marshall Academy Charter School*, CAB Docket No. 2001-05, p. 16.
24. New Hope and its related entities/officials have violated the Ethics Act by failing to file Statements of Financial Interest. 65 Pa.C.S. §1101, *et seq*.; 24 P.S. § 17-1715-A(11); 24 P.S. § 17-1729-A(a)(5); *Renaissance Charter School*, CAB Docket No. 2008-07, 13-14.
25. No public official or public employee shall engage in conduct that constitutes a conflict of interest. 65 Pa.C.S. §§ 1102, 1103(a).
26. The Ethics Act requires an open and public process for any public official entering into contracts valued at more than \$500 with a governmental body with which the public official is associated and prohibits the public official from having supervisory or overall responsibility for implementation or administration of the contract. 65 Pa.C.S. § 1103(f).

27. New Hope and its related entities/officials, including Anderson and New Hope's Board of Trustees, have violated the Ethics Act by engaging in conduct that constitutes a conflict of interest. 65 Pa.C.S. §§ 1102, 1103(a).
28. A director of a nonprofit corporation shall stand in a fiduciary relationship to the corporation and shall perform his duties as a director in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skills and diligence, as a person of ordinary prudence would use under similar circumstances. 15 Pa.C.S.A. §5712(a).
29. The powers and duties of the board of directors of a nonprofit corporation shall be exercised and performed as shall be provided in the bylaws. 15 Pa.C.S.A. §5721.
30. When a Board of Trustees does not operate a charter school properly, *e.g.*, the Board of Trustees violates the charter, the Sunshine Act, or other laws, the remedy is to revoke the charter. 24 P.S. § 17-1729-A(a)(5); *Fairfield Area School District v. The National Organization for Children, Inc.*, 837 A.2d 644, 651 (Pa. Cmwlth. 2003).
31. New Hope and its related entities/officials, including Anderson and New Hope's Board of Trustees, have violated the CSL, the Ethics Act, the Non-Profit Corporation Law, New Hope's Conflict of Interest Policy, and they have not been exempted therefrom. 65 Pa.C.S. §1101, *et seq.*; 15 Pa.C.S.A. §5712(a); 24 P.S. § 17-1715-A(11); 24 P.S. § 17-1729-A(a)(5).
32. New Hope committed one or more material violations of the conditions, standards or procedures contained in its charter. 24 P.S. § 17-1729-A(a)(1).
33. Following an independent review of the record before CAB and after giving due consideration to the findings of the School Board, CAB finds that the nonrenewal of New

Hope's charter was proper, is supported by the evidence in the record, and specifically sets forth its reasons for agreeing or disagreeing with the School Board's findings herein.

24 P.S. § 17-1729-A.

DISCUSSION

I. PRELIMINARY ISSUES

A. Requests to Supplement the Record

Before addressing the merits of the appeal, it is necessary to dispose of two requests to supplement the record. The standard regarding the admission of supplemental information in these proceedings is whether the information was previously unavailable. 24 P.S. § 17-1729-A(d). Although the CSL does not define "previously unavailable," the Commonwealth Court has provided guidance on the issue: "[i]nformation that was previously unavailable cannot include information that could have been obtained and submitted for inclusion into the record prior to the district's vote." *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, 405 (Pa. Cmwlth 2003). However, if information did not exist, and could not have existed, at the time of the hearing before the School Board, CAB could decide to consider that information in reaching its decision. In addition to the record, CAB may consider the charter school plan, annual reports, student performance and employee and community support for the charter school. 24 P.S. § 17-1729-A(d). With these principles in mind, the two requests will be addressed.

The first request is from the York County Education Association ("YCEA"). It submitted a Petition asking CAB to affirm the nonrenewal of the charter issued to New Hope. The YCEA requested that CAB consider this request, pursuant to Section 1729-A(d), which provides that CAB "may consider ... employee and community *support for* the charter school in addition to the record." 24 P.S. § 17-1729-A(d). YCEA's Petition, however, does not contain employee or

community *support* for the charter school. Rather, the Petition, in the form of a resolution consisting of two pages followed by numerous pages of signatures (presumably of members of the YCEA), sets forth various reasons why the YCEA *opposes* the renewal of New Hope's charter and urges CAB to affirm the School Board's decision not to renew it. The information contained in the Petition is clearly not the type of public comment contemplated by the law; moreover, it is comment that could and may have been provided during the public hearing before the School Board. Thus, the Petition will not be considered by CAB.

The second request is from New Hope. On July 26, 2013, New Hope filed a Motion to Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document under Section 17-1729-A(d). New Hope seeks to supplement the record with two items: (1) a copy of New Hope's application for approval to place students in an AEDY program; and (2) a printout from a PDE website. According to the motion, New Hope's application was allegedly filed with PDE sometime after the close of the local School Board hearings in this matter when New Hope representatives became aware that PDE required local education agencies to have PDE approval prior to placing students in an AEDY program. See New Hope's Motion to Supplement the Record, ¶¶ 11-15. The first document is allegedly New Hope's application for such approval, and the printout from the PDE website is allegedly evidence of New Hope's approval from PDE to place students in an AEDY program. New Hope claims that neither document was available at the time of the nonrenewal hearings, and therefore, should be considered by CAB.

York opposes the Motion, arguing that New Hope submitted these materials to the Hearing Officer previously in the case and that the hearing officer excluded the two documents

from the record in his June 14, 2013 Order.⁹ York, alternatively, argues that: (1) the unavailability of the documents is uncertain because neither document contains a date so there is no evidence as to when the documents were submitted to PDE or printed from PDE's website so they should be excluded; and (2) the PDE website printout does not establish that New Hope has actually been "approved" to place students in any AEDY program because the printout merely states "PDE Accepted," which may not mean that New Hope is actually approved to send students to an AEDY program. CAB agrees. A review of the documents reveals that there is no evidence of when New Hope filed this application with PDE for approval to send students to an AEDY program, nor is there any evidence that New Hope has been granted approval on the face of the documents. CAB believes that the Hearing Officer properly excluded the documents from the record. Therefore, they will not be considered.

Alternatively, New Hope asks CAB to take official notice of the items, arguing that they are public documents. These documents do not appear to be the type contemplated by the term, "public documents," about which official notice should be taken. *I.e.*, the documents are not an official report, decision, opinion or published compilation of scientific or economic statistical data issued by a governmental agency; and there is no evidence that these documents are readily available to the public. *See* 1 Pa. Code §35.165.¹⁰ Therefore, New Hope's Motion to

⁹ A review of the two documents confirms that these exact same documents were excluded by the hearing officer in his June 14, 2013 Order. York argues that this Motion to Supplement the record is essentially a request for reconsideration of the hearing officer's June 14, 2013 Order which sustained the School District's objections to these two Exhibits. By letter dated August 7, 2013, New Hope responded that this motion was before CAB, not before the hearing officer. Thus, it is necessary to address it here. However, CAB agrees that New Hope should not be able to bypass the decision of the hearing officer regarding the setting of the record by filing a motion with the hearing officer and then, when challenged on it, arguing that the motion is really before CAB.

¹⁰ Section 35.165 provides:

Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by

Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document, is denied.

B. Due Process Claim

New Hope raises a due process claim alleging that the School Board adjudicated certain issues without giving New Hope proper notice, as required by 24 P.S. §17-1729-A. Specifically, New Hope states that it was not put on notice about: (1) a possible violation of 22 Pa. Code §11.11(b) regarding enrollment of students; (2) the violation of teacher certification requirements with respect to placing students at Challenge Academy; (3) the failure of certain representatives to file Statements of Financial Interest; (4) concerns that Anderson exercises *de facto* control over the Board of Trustees, and therefore, has failed to fulfill his fiduciary duties; and (5) the Board of Trustees violating its own Conflict of Interest policy. *See* New Hope's Brief, pp. 34-35, 40. As a result, New Hope claims it was denied the opportunity to present evidence or witnesses to refute those claims.

New Hope's argument is without merit. The CSL requires that the local School Board, in its Notice, state the grounds for nonrenewal of a charter "with reasonable specificity." 24 P.S. §17-1729-A(c). A review of the Amended Nonrenewal Notice issued to New Hope on February 16, 2012, reveals that the School Board complied with the statute. The charges listed in the Amended Notice state, *inter alia*: (1) "New Hope has failed or refused to enroll students in accordance with the terms and condition of its enrollment/admissions policy"; (2) "New Hope is violating applicable statutes, regulations and/or guidance from the [PDE] relating to placement

the offerer to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered in evidence as a public document item by specifying the document or relevant part thereof without regard to the requirements of § 35.169 (relating to copies to parties and agency).

1 Pa. Code §35.165.

of its students at alternative education facilities including, but not limited to, Challenge Academy, without appropriate and proper contracts and/or approval or authorization from [PDE]”; (3) New Hope is violating “applicable law, including but not limited to, the Pennsylvania Non-Profit Corporation Act and the Public Official and Employee Ethics Act”; (4) New Hope is violating “ethical and fiduciary standards and duties with respect to the role and involvement of Isiah Anderson, and the for-profit entities owned and/or controlled by Mr. Anderson, in the operations of New Hope”; and (5) “this includes, but is not limited to, Mr. Anderson’s role at New Hope in terms of its governance and/or operations; the use of Three Cord, Inc., as the management company for New Hope, a for-profit company owned and/or controlled by Mr. Anderson; the placement of students by New Hope in Challenge Academy, a for-profit entity that is owned and/or controlled by Mr. Anderson; and the utilization of services from I. Anderson Real Estate, a for-profit entity that is owned and/or controlled by Mr. Anderson.” *See* Record at Exhibit B.

The Amended Nonrenewal Notice puts New Hope on notice of the grounds for the School Board’s action, with reasonable specificity. It stated that New Hope was placing students at Challenge Academy without prior approval of PDE. This charge certainly encompasses the question of teacher certification since a charter school must ensure that its students are taught by certified teachers, unless it receives an exemption from that requirement from PDE. New Hope knew that it had no such exemption since New Hope claimed it did not need to seek approval from PDE in order to place students in an AEDY program. New Hope had notice of possible violations of the Ethics Act and the Non-Profit Corporation Act, of Mr. Anderson’s involvement with and role in the operations of New Hope *vis-a-vis* his for-profit entities, all of which included questions about ethical and fiduciary standards and duties of Anderson and the Board of

Trustees, particularly since the Board is the entity charged with operating the charter school under the CSL, *see* 24 P.S. §17-1716-A.

As to any alleged violation of 22 Pa. Code §11.11(b),¹¹ the Amended Nonrenewal Notice put New Hope on notice as to questions about New Hope's admissions/enrollment policy. It was during New Hope's defense of that issue that New Hope itself established a possible violation of Section 11.11(b). New Hope argued that it could not enroll students in compliance with its admission policy until it received and reviewed academic, disciplinary and special education records from the School District. New Hope itself presented witness testimony and introduced records which showed that New Hope was seeking academic, disciplinary and special education records for students prior to their enrollment in New Hope. Thus, New Hope presented evidence regarding this issue during the hearings before the local School Board, and in fact, created the issue.

Moreover, during the course of the seven days of hearings held from February 23, 2012 through March 19, 2012, New Hope had ample opportunity to present witnesses and evidence on each of the issues it now raises.¹² It is clear from the record that New Hope received both adequate notice of the grounds on which the School Board based its decision and the opportunity to present witnesses and evidence on each of those issues. CAB finds that New Hope's due process rights were not violated, and New Hope's due process argument is rejected.

¹¹ 22 Pa. Code §11.11(b) requires a charter school to enroll a child the next business day, but no later than 5 business days after application, as long as the charter school has proof of the child's age, residence, and immunizations.

¹² Even after the hearings were completed, New Hope was able to submit additional Statements of Financial Interest. *See* Record at Exhibit O.

II. STANDARD OF REVIEW

The Pennsylvania General Assembly enacted the CSL to provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system. It was the intent of the Legislature that charter schools improve pupil learning, increase learning opportunities for all students and offer diverse and innovative educational techniques while operating independently of the traditional public school system. *See* 24 P.S. § 17-1702-A. In addition, the General Assembly intended to hold charter schools “accountable for meeting measurable academic standards,” in order to assure that these schools were accomplishing the goals of the CSL. 24 P.S. § 17-1702-A(6). The charter school application process is rigorous as the intent of the CSL is to improve educational opportunities for students. *See generally*, 24 P.S. §§ 17-1719-A, 17-1702-A. When a charter is granted by a local board of school directors, the charter school is required to comply with the terms and conditions of the charter, as well as the information contained in the charter school application, which is incorporated into the charter. 24 P.S. §§ 17-1720-A, 17-1729-A(a)(1).

Section 1729(a) of the CSL sets forth the causes for nonrenewal or termination of the charter by a school district. Those causes include:

- (1) One or more material violations of any conditions, standards or procedures contained in the written charter.
- (2) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter.
- (3) Failure to meet generally accepted standards of fiscal management or audit requirements.
- (4) Violation of provisions of [the Charter School Law].
- (5) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.
- (6) The charter school has been convicted of fraud.

See, 24 P.S. § 17-1729-A(a). In order to legally terminate or not renew a charter, a School District must prove that a charter school violated at least one of these provisions.

CAB applies a *de novo* standard of review when entertaining appeals from a School Board's denial of a charter school application under Section 1717-A(i)(6). 24 P.S. §1717-A(i)(6); *West Chester Area School District v. Collegium Charter School*, 812 A.2d 1172 (Pa. 2002). The CSL requires that CAB "give 'appropriate consideration' to the findings of the School District Board, while making an independent determination as to the merits of the charter school application." *West Chester*, 812 A.2d at 1180. Since the standard of review for appeal of the nonrenewal of a charter school's charter is the same, compare 24 P.S. § 17-1729-A(d) with 24 P.S. §1717-A(i)(6), the review in this matter is also a *de novo* review. CAB is required to independently review the findings of the School Board for nonrenewal of New Hope's charter in light of the record while giving "due consideration" to them, and then specifically articulate its reasons for agreeing or disagreeing with those findings. 24 P.S. § 17-1729-A(d).

III. BURDEN OF PROOF

New Hope argues that the School District must provide "compelling" evidence that a charter school violated the provisions of Section 17-1729-A(a) in order not to renew a charter. New Hope cites *In Re Fell Charter School*, CAB Docket No. 2007-04 at 7, to support this burden of proof. New Hope's Brief at 3. However, there is no statutory basis for a "compelling evidence" standard.¹³ Rather, as CAB recently stated, the degree of proof required to establish a case before an administrative tribunal is the same degree of proof used in most civil proceedings, *i.e.*, a preponderance of the evidence. See *Graystone Academy Charter School v. Coatesville Area*

¹³ In *Renaissance Charter School*, CAB clarified that "compelling" in the *In Re: Fell Charter School*, CAB Docket No. 2007-04, decision referred to the type of violation, *i.e.*, significant, material or fundamental, which needed to be shown before the charter school's charter could be terminated, not the type of evidence that needed to be produced. *Renaissance Charter School*, CAB Docket No. 2008-07, 3, n.3.

School District, CAB Docket No. 2012-01, p. 38; *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). “Preponderance of the evidence” generally means evidence “that demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent’s case must weigh slightly more than the opposing evidence.” *Graystone Academy Charter School*, *id.* at 38.

In the present case, York School Board voted not to renew New Hope’s charter. Specifically, the School Board found that New Hope and/or its public officials and employees: (1) failed to meet the requirements for student performance as set forth in Chapter 4 of the State Board of Education regulations and in its charter; (2) materially violated its written charter, with regard to meeting academic performance standards in its charter, as well as complying with its admission policy as set forth in its charter; (3) violated provisions of the CSL and other laws applicable to charter schools, including those governing (a) the enrollment of students, (b) the placement of students in AEDY programs, and (c) truancy and student attendance reporting; and (4) violated the Ethics Act, the Non-Profit Corporation Law, and New Hope’s own Conflict of Interest policy in the way they managed, oversaw, and governed New Hope and fulfilled their fiduciary duties and responsibilities.

CAB finds, based upon its independent review of the record, there is sufficient evidence to support the decision of York School Board to not renew New Hope’s charter.

IV. NEW HOPE FAILED TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE AS SET FORTH IN CHAPTER 4 OF THE STATE BOARD OF EDUCATION REGULATIONS AND IN ITS CHARTER. 24 P.S. §17-1729-A(a)(2).

The CSL requires charter schools to participate in the requirements of Pennsylvania’s System of School Assessment, PSSA, found in Chapter 4¹⁴ of the Pa. Code, *see* 22 Pa. Code

¹⁴ Chapter 4 has replaced 22 Pa. Code Ch. 5. *See Sugar Valley Rural Charter School*, CAB Docket No. 2004-04, 9.

§§4.1-4.83; 24 P.S. §§ 17-1715-A(8) and 17-1729-A(a)(2). The purpose of Chapter 4 is “to establish rigorous academic standards and assessments to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.” 22 Pa. Code §§4.2; *see also* 24 P.S. §17-1702-A(6). Section 4.51 of the regulations requires schools to demonstrate that their students are proficient or better on the PSSA tests every year, pursuant to the mandates of the No Child Left Behind (hereinafter “NCLB”) Act. 22 Pa. Code §4.51(a)(1). The General Assembly, consistent with its expression of intent to hold charter schools accountable for meeting measurable academic standards, provided that one of the bases for nonrenewal of a charter was the failure to meet the requirements for student performance as set forth in Ch. 4 of the State Board of Education regulations. 24 P.S. § 17-1729-A(a)(2).

Pennsylvania’s performance standards are associated with the NCLB and are found in 22 Pa. Code Ch. 4, 22 Pa. Code Ch. 403, and Pennsylvania Consolidated State Application Accountability Workbook (hereinafter “Accountability Workbook”), last revised May 12, 2011. Record at Exhibit J-31. In order to comply with the mandates of the NCLB, PDE developed the Accountability Workbook, which has been approved by the United States Department of Education. Record at Exhibit C, 2/23/2012 N.T. 113, 117; Exhibit J-31. The requirements set forth in Pennsylvania’s accountability system apply to all public schools, including charter schools. 22 Pa. Code §403.3(a); Record at Exhibit J-31, pp. 8, 35.¹⁵ In fact, the only way to assess student academic performance under Ch. 4 is through the Accountability Workbook.

¹⁵ New Hope argues that it cannot be found to have violated any law when the requirements of PDE are based on guidelines, Basic Education Circulars (hereinafter “BEC”) or other documents which do not have the force of law. New Hope puts the Accountability Workbook in that category. This argument is rejected. New Hope specifically states in its application for charter that “it is the intention of everyone involved with New Hope Academy Charter School to operate a high quality educational institution *that fully complies with all applicable laws, regulations and requirements.*” Record at Exhibit J-3, p. 7 (emphasis supplied). To hold that New Hope does not need to comply with BECs or other PDE guidelines which govern and manage the operation of charter schools, particularly when

The Workbook establishes that the only way to achieve AYP is through the use of PSSA scores. *Id.* at 122, 143. It is reasonable for CAB to rely on PSSA results as this is a uniform test used statewide to measure performance. *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145, 1153 (Pa. Cmwlth. 2007). In addition, since AYP is the academic performance standard tied to the NCLB, a charter school's "failure to make AYP in four out of five years of the school's charter is the equivalent of failing to meet the minimum performance standards." *Renaissance Charter School*, CAB Docket No. 2008-07, p. 10.¹⁶

New Hope has never made AYP under the system of assessment set forth in 22 Pa. Code Chapter 4 in any of the years of its existence. Record at Exhibit C 2/23/12 N.T. 130. As a result, it is currently in Corrective Action II. Record at Exhibits J-15, J-16, G, 3/8/12 N.T. 36; Exhibits A, B and C of School District's 1/28/13 Motion to Supplement. In order to determine whether schools are meeting AYP proficiency standards of proficient or better, the State established the following thresholds: for 2008, 2009 and 2010 -- Reading, 63%; Math, 56%. For 2011, the thresholds are Reading, 72%; Math, 67%. For 2012, the thresholds are: Reading, 81%; Math, 78%. In 2009, out of New Hope's students overall (grades 5-8 and 11) only 32.6% scored proficient or better in Reading, and only 22.4% scored proficient or better in Math thereby failing to make the State's AYP. In 2010, New Hope's students overall (grades 5-8 and 11) had scored only 32.5% proficient or better in Reading, and only 31.5% scored proficient or better in

mandated by the CSL itself, would result in charter schools operating in any way that they choose with no consistency in the management or governance of the school and with no proof of measurable academic performance. Such a result would be completely contrary to the intent of the CSL.

¹⁶ New Hope argues that the York School Board misapplied the law when it relied on *Renaissance Charter School*, CAB Docket No. 2008-07, for this proposition. New Hope argues that the School Board confused the minimum standards of the school charter with the minimum standards of Chapter 4. New Hope argues that the charter in *Renaissance* specifically referenced NCLB, which utilizes AYP to establish minimum performance standards, but that New Hope never adopted any particular performance standards in its charter. New Hope further asserts that AYP and NCLB are not part of the Charter School Law or Chapter 4, so they may not be imposed upon New Hope as a requirement. This argument is without merit. Chapter 4 specifically references NCLB; so does New Hope in its charter. See 22 Pa. Code §4.51; Record at Exhibit J-3, pp. 15, 16, 18. Thus, York School Board properly found that New Hope's failure to make AYP in every year that it has been operating is the equivalent of failing to meet minimum performance standards, see Discussion, above.

Math, again failing to make AYP. In 2011, New Hope's students overall (grades 5-8 and 11) had scored only 34.7% proficient or better in Reading, and only 32.2% scored proficient or better in Math, failing to make AYP. Again, in 2012, New Hope's students overall (grades 5-8 and 11) had scored only 37% proficient or better in Reading, and only 35% scored proficient or better in Math, again failing to make AYP. Record at Exhibits J-15, J-16, G, 3/8/12 N.T. 36; Exhibits A, B and C of School District's 1/28/13 Motion to Supplement. The record establishes that there has not been a significant improvement in New Hope's students' overall performance throughout the entire time New Hope has been in existence.

In particular, New Hope's students' overall Reading proficiency has improved by less than 5% from 2009 (32.6%) until 2012 (37%) and falls well below the state target in Reading -- in 2009 (63%), in 2012 (81%). The result is a little better in Math. New Hope's students' overall Math proficiency has improved by about 12.6% from 2009 (22.4%) until 2012 (35%). However, it remains well below the state target for Math (56% in 2009 and 78% in 2012) and does not meet AYP.

A review of data for individual tested grades also fails to show steady or significant improvement in academic progress for students at New Hope in Reading or in Math. When New Hope's scores on the PSSA's are compared with the scores of the School District's schools in equivalent grades, the students in the School District's schools out-performed the students in New Hope, with the exception of New Hope's eighth-graders in Reading in 2011. In 2011, New Hope's eighth-graders performed better by 50% in Reading than one of the School District's schools (Hannah Penn - 41.6%), but not better than another District school (Smith - 57.2%). However, in 2012, New Hope's eighth-graders' PSSA scores dropped from 50% to 43%. Record

at Exhibit C, 94-96; Record at Exhibit J-14; Exhibit C of School District's 1/28/13 Motion to Supplement. Again, this reveals no real academic progress for the students in New Hope.

It is particularly instructive that the consultant hired by New Hope in October 2011, Dr. Michael Clemens, testified that the three weakest areas for New Hope were: (1) "curriculum, instruction, and assessments aligned with state standards"; (2) "the frequent monitoring of learning and teaching"; and (3) "focused professional development." Record at Exhibits D, 2/29/12 N.T. 85, 87-89 and K-39, p.1. Dr. Clemens testified that based upon his review in 2011 New Hope's curriculum and instructional practices were not aligned with Pennsylvania standards as required in Chapter 4, despite the fact that it is extremely important for a school to have curriculum, instruction and assessments that are aligned with state standards, particularly since that is a requirement of Chapter 4. Record at Exhibits D, 2/29/12 N.T. 85, 87-89 and K-39, p.1. Further, Dr. Clemens testified that in comparing the proficiency scores for the York City schools and New Hope, he found that the proficiency scores for York City schools were higher than those of New Hope. Record at Exhibits D, 2/29/12 N.T. 94.

New Hope argues that the School Board misapplied the law when it used New Hope's failure to meet AYP as a basis for nonrenewal of New Hope's charter. See New Hope's Brief, p. 7-9. New Hope argues that CAB rejected that approach in the *Lincoln Charter School* case when CAB stated that "[s]chools are required to assess the attainment of their students, and to work to achieve standards, but no specific statistical level of attainment is required to retain a charter under the CSL." *Renewal Application of the Lincoln Charter School*, CAB Docket No. 2005-3, at p. 11. See New Hope's Brief, p. 7-9. New Hope is in error. In *Lincoln*, the record evidence established that Lincoln had been successful in improving the attainment of its students' performance to at least the same level as the York School District schools. CAB held that the

record did not support York School District's allegation that Lincoln had failed to meet the applicable requirements for student performance. *Lincoln*, CAB Docket No. 2005-3, at p. 11. In this case, the record evidence is very different. As discussed above, the record is replete with evidence that New Hope not only has failed to reach the same level of student performance as the York School District schools, but has failed to improve its own students' performance by any significant degree over its four to five years of operation, thereby failing to meet the legislative mandate of the CSL of improving pupil learning and increasing learning opportunities for all students. *See* 24 P.S. §17-1702-A.

New Hope also argues that it cannot be found to have failed to meet the requirements for student performance because Chapter 4 does not set performance requirements, but rather, only requires assessments to be done. New Hope is in error. The CSL requires that charter schools be held accountable for meeting measurable academic standards. 24 P.S. §17-1702-A. The requirements of Chapter 4 do contemplate improved student performance, which is measurable.¹⁷ To require anything less would be to fail to implement the intent of the General Assembly when it passed the CSL. As CAB stated in *Graystone*, it is "entirely reasonable and logical to rely on the PSSA scores, which are the basis for determining AYP, as the basis for finding that State standards have been violated...." *Graystone Academy Charter School v. Coatesville Area School District*, CAB Docket No. 2012-01, p. 57. The evidence in this case reveals that for every year of its existence, New Hope has failed to meet the requirements for student performance as set forth in 22 Pa. Code Chapter 4, which constitutes sufficient grounds for nonrenewal of New Hope's charter. *See* 24 P.S. §17-1729-A(a)(2).

¹⁷ Unlike the record in *Lincoln*, in this case the School Board discussed in great detail the requirements of the Department of Education's regulations at 22 Pa. Code Ch. 4, and the evidence of New Hope's failure to meet PDE's academic performance requirements.

The School Board also found that New Hope failed to meet performance standards under its charter. New Hope argues that the School Board had no basis for this, claiming that it never set any specific goals for performance objectives in its charter nor did the charter require meeting AYP to show performance. New Hope argues that because it did not promise to meet any performance standards in its charter, its failure to meet PDE's requirements for student performance cannot be a basis for nonrenewal of its charter. This argument is rejected for several reasons.

First, if New Hope were permitted to undermine PDE's requirements to meet AYP and demonstrate student performance merely by leaving specific target numbers or goals out of its charter, then every charter school could defeat the requirements of the CSL merely by remaining silent on specific numerical goals in its charter when discussing academic performance or measurable goals. Such a result would be completely contrary to the intent of the CSL to improve pupil learning, increase learning opportunities for all pupils, and hold schools accountable for meeting measurable academic standards. Second, the record establishes and the School Board found that New Hope's charter application does set forth measurable goals and objectives in reference to PSSA assessments and AYP. In particular, New Hope stated, *inter alia*:

- It would develop curriculum tailored to individual learning needs **based on the PA Academic Standards.**
- Teachers **will integrate the PA Academic Standards** into student learning.
- The student **will integrate and demonstrate proficiency** in all areas of knowledge through reading, writing, speaking and listening.
- The student **will meet the proficient level in language arts and mathematics.**
- **Student's academic growth will be validated in terms of test scores achieved and other assessment data.**
- Students will strive to score a **Proficiency Level or better on the PSSA in Reading, Writing and Mathematics.**
- New Hope Academy Charter School **will strive to meet Adequate Yearly Progress.**

Record at Exhibit J-3, pp. 15, 16, 18 (emphasis supplied). Additionally, under the Section of the Application captioned "4. School Accountability," the following question and answer are set forth:

How will student development towards the school's overall learning goals and objectives be measured?

....

Scores from the PSSA will be used to measure the student progress in regards to the State Standards.

Record at Exhibit J-3, p. 92 (emphasis supplied). Thus, New Hope, in its charter, identified certain measurable goals and objectives that it stated it would meet, including using PSSA results to measure performance with regard to the State standards, as well as striving to meet AYP.¹⁸ The goals and objectives in New Hope's charter are performance standards to which New Hope must be held accountable. 24 P.S. §17-1729-A(6). To hold otherwise would render meaningless the requirements of the CSL. As discussed above, the record in this case establishes that New Hope has failed to meet requirements for student performance set forth 22 Pa. Code Ch. 4 and in its written charter. CAB agrees with the findings of York's School Board in this regard and concludes that the decision not to renew New Hope's charter on these grounds was proper. *See* 24 P.S. §17-1729-A(a)(2).

¹⁸ To the extent New Hope is arguing that its goals and objectives in its charter are "aspirational, not mandatory," and therefore, cannot serve as a basis for revoking a charter, CAB has rejected that argument in *Graystone*. *Graystone*, *supra*, pp. 55-56. When a charter school fails to make AYP in all the years of the school's charter, it is the equivalent of failing to meet minimum performance standards, making nonrenewal of the school's charter appropriate. *Id.*, p. 56; *see also*, *Ronald H. Brown Charter School*, 928 A.2d at 1153. While New Hope suggests that the PVAAS results show that New Hope is making progress, the School District appropriately rejected the use of PVAAS to show improved student performance. The School Board found that both of New Hope's expert witnesses, Dr. Clemens and Dr. James Bohan, admitted that PVAAS data is not an approved substitute for making AYP. Record at Exhibits D, 2/29/12 N.T. 96, G, 3/8/12 N.T. 25-27. *See also*, testimony of Karen Hessel, Bureau Director for Teaching and Learning, who stated that PVAAS results cannot be used to meet AYP; rather she stated that PVAAS is a good tool to assess how a school's programs and instruction are going for strategic planning purposes, but are not an appropriate measure of student performance. Record at Exhibit C, 2/23/12 N.T. 123-124, 135-136, 143.

V. NEW HOPE COMMITTED ONE OR MORE MATERIAL VIOLATIONS OF THE CONDITIONS, STANDARDS OR PROCEDURES CONTAINED IN ITS WRITTEN CHARTER. 24 P.S. §17-1729-A(A)(1).

A charter school is required to comply with the terms and conditions of its charter, as the charter granted by a school district is legally binding on both the local board of school directors of a school district and the charter school's Board of Trustees. 24 P.S. §17-1720-A. CAB has previously held that: "[o]nce a charter is granted, the charter school is required to comply with its terms and to achieve the goals specified therein and violation of the material terms of the charter is a proper basis for revocation [nonrenewal]." *In re: Creative Educational Concepts Charter School*, CAB Docket No. 1999-15, p. 6. Further, because the

charter school application is required by the CSL to be extremely detailed and specifically identify the manner in which the charter school will operate (see 24 P.S. § 17-1719-A) and because the information contained in the charter school application eventually becomes part of the charter itself, the information in the charter school application is intrinsic to the charter and is essentially the heart of the charter school.

In re: Thurgood Marshall Academy Charter School, CAB Docket No. 2001-05, p. 11.

A. New Hope Has Violated the Academic Standards in Its Charter.

The terms of New Hope's charter related to academic performance goals and objectives are set forth above, *see* Discussion, *supra*, pp. 31-33. In addition, New Hope's CAO, Karen Schoonover, admitted that the goals and objectives identified in New Hope's charter are also requirements of Chapter 4 of the State Board of Education regulations. Record at Exhibit D, 2/29/20012 N.T. 99-100. New Hope's failure to comply with the terms and provision of its charter regarding the academic performance of its students on the PSSA tests and achievement of AYP, as discussed *supra*, 26-33, are material violations of the conditions and standards of its charter justifying nonrenewal of the charter. 24 P.S. §17-1729-A(a)(2).

In an attempt to establish that it is trying to improve student performance, New Hope presented the testimony of Dr. Michael Clemens, an educational consultant whom New Hope hired in October 2011, which was the fifth year of New Hope's operations. New Hope argues that the York School Board improperly disregarded the testimony of Dr. Clemens regarding his work to align New Hope's curriculum with the state standards. It argues that the York School Board also failed to properly credit the evidence New Hope presented regarding the PVAAS growth data. This is not accurate. To the contrary, York School Board found that Dr. Clemens' testimony, that New Hope's curriculum, instruction and assessments were not aligned with state standards, was evidence that New Hope, after four years of operation, has failed to comply with the requirements of Chapter 4 and with the requirements of its charter that it would develop curriculum tailored to individual learning needs **based on the PA Academic Standards**. Further, the School Board did address New Hope's evidence regarding the PVAAS data. The School Board determined that the PVAAS information was not an approved way to make AYP in Pennsylvania and did not properly measure student academic performance. CAB agrees with the School Board's findings and discussion of the matter. Thus, CAB finds that York's nonrenewal of New Hope's charter on the basis that it materially violated a condition, standards or procedure contained in its written charter was appropriate. *See* 24 P.S. §17-1729-A(a)(2).

B. New Hope Is Violating the Admission Policy Included in Its Charter.

The York School Board found that New Hope was violating the admission policy set forth in its Charter application in three ways: (1) by amending its admission policy without seeking an amendment to its Charter from the School District; (2) by seeking student records, including grade reports, special education records, disciplinary records and standardized test scores, from the School District before a student has been accepted for enrollment and then

basing enrollment decisions on the review of such records; and (3) by failing to enroll students within the timelines set forth in the State Board of Education regulations on enrollment. Record at Exhibit S, p. 66.

In its charter application New Hope provided that “Students will be admitted only during the first 10 days of each quarter.” Record at Exhibit J-3, pp. 188, 193, 194. The undisputed record evidence establishes that New Hope habitually enrolled students outside the 10-day window in each quarter, that the School District raised the issue on February 24, 2011 with Anderson, that Anderson stated that New Hope had changed its admission policy since the charter application was submitted, and that the change was made unilaterally by the Board of Trustees without seeking an amendment from the School District. Record at Exhibits J-5, J-17, J-18; Exhibit C, 2/23/12 N.T. 147, 149-150, 156, 167; Exhibit K-13.¹⁹

The School Board found that the Board of Trustees could not unilaterally amend the admissions policy, but rather, needed to seek an amendment of the charter from the School District in order for New Hope not to violate the terms of its charter. CAB recently stated “a charter school cannot make unilateral changes to a charter agreement, as unapproved changes run counter to the primary purpose of the charter agreement. *Graystone, supra*, at 35, citing *RAPAH Charter School*, CAB Docket No. 2007-03, p. 10.

New Hope argues that New Hope’s bylaws authorize its Board of Trustees to amend portions of its charter, thus, obviating the need to seek approval from the School District. CAB has previously rejected that argument. *Graystone, supra*, at 35-36. Clearly, allowing charter schools to make changes to their charters without the approval of the chartering School District

¹⁹ New Hope contends that when the School District first raised the question of compliance with the 10-day enrollment window, the Board of Trustees had already amended the policy. However, the evidence of record establishes that the amendment date of the admission policy was July 14, 2011, which was after the February 24, 2011 meeting between the School District and Anderson where Anderson stated that the Admission Policy had already been amended. Record at Exhibit C, 2/23/12 N.T. 156, 167; *cf.* Record at Exhibit K-13.

could result in a charter school deviating from the provisions and conditions of its charter, which might not have been granted but for those provisions. *Id.* Thus, the School Board properly found that by enrolling students outside the 10-day window as represented in its charter application, New Hope violated the terms of its charter.

New Hope argues, however, that deviation from the 10-day enrollment policy was not a *material* violation of the charter because it did not affect New Hope's ability to comply with the CSL or its charter. What constitutes a "material" violation is not defined in the CSL. The School District contends that the admission policy and criteria for evaluating the admission of students is material because it is required to be included in the application by the CSL. *See* 24 P.S. §17-1719-A(6). CAB agrees. The CSL provides for specific requirements regarding enrollment in a charter school. *See* 24 P.S. §17-1723-A. Clearly, the General Assembly has determined that a charter school's admission/enrollment policy is material to the charter. Although a charter school's Board of Trustees possesses authority to decide matters related to the operation of the school, that authority is subject to the school's charter. Any changes to the charter are subject to the approval of the chartering district. Therefore, CAB agrees with the findings of the School Board that New Hope's unilateral change to its admission policy was a material violation under the CSL, and therefore, grounds for nonrenewal. 24 P.S. §17-1729-A(a)(1); *Graystone, supra* at 36-37.

In an attempt to defend against its failure to comply with the 10-day enrollment policy, New Hope argues that it was prevented from complying with its own policy because the School District failed to provide New Hope records which it requested regarding prospective students. Therefore, New Hope contends that its failure to comply with its admission policy was not New

Hope's fault, but rather was due to the School District's delay in providing New Hope with requested records which were necessary for New Hope to have before it could enroll a student.

While presenting evidence to support this argument, New Hope revealed that it sought academic and other records from the School District for students who were not yet enrolled in New Hope. Record at Exhibit G, 3/8/12 N.T. 46-47, 80-83; Exhibit H, 3/13/12 N.T. 126-127; Exhibits K-16--K-27.²⁰ The records that New Hope sought from the School District were not records related to a child's age, residence and immunizations, which are the only records an enrolling school can require prior to enrollment. *See* 22 Pa. Code§11.11(b)(a charter school shall normally enroll a child the next business day, or no later than 5 business days, after receiving from the child's parent/guardian proof of the child's age, residence and immunizations). The School District is not required to provide transfer or other records until the student has been enrolled. *See* 22 Pa. Code§11.11(b).

New Hope asserts that requesting educational records for students not yet enrolled in its school violates no statute or regulation, nor is it improper under any BEC. New Hope is in error.²¹ The law is clear that a charter school cannot discriminate in its admissions practices and must enroll a student no later than five (5) business days after receipt of a student's application, as long as the enrolling school has been provided with proof of the student's age, residence and immunizations. 22 Pa. Code § 11.11(b). The record in this case makes clear that New Hope was not complying with the law. Rather, New Hope was requesting educational documents from the School District prior to, and for the purpose of, making its enrollment decision. Record at

²⁰ New Hope's witness testified that it was New Hope's practice to request from the School District grade reports, attendance reports, special education documents and other documentation for New Hope's administration to review, and that only after that review was an enrollment decision made by New Hope with regard to that student. Record at Exhibit G, 3/8/12 N.T. 46-47, 80-83.

²¹ New Hope specifically asserts in its charter that it will comply with the CSL regarding enrollment found in 24 P.S. §17-1723-A. Record at Exhibit J-3, p. 193.

Exhibit G, 3/8/12 N.T. 80-83. According to PDE's BEC on "Enrollment of Students," a receiving school, such as New Hope, is prohibited from requiring information from the previous school which the student attended "*as a precondition to enrollment and may not delay a student's admission for lack of this information.*" See PDE's BEC on "Enrollment of Students," which can be found at:

http://www.portal.state.pa.us/portal/server.pt/community/purdon%27s_statutes/7503/enrollment_of_students/507350 (italics in original).

New Hope argues that PDE's BEC does not have the force of law, and therefore, its violation thereof cannot be used to justify the nonrenewal of its charter. However, charter schools are subject to 22 Pa. Code Chapter 11 pursuant to 24 P.S. §17-1732-A (b). Charter schools are also prohibited from unlawfully discriminating in admissions (24 P.S. §17-1715-A(3)) or from discriminating on the basis of intellectual ability, athletic ability, measures of achievement or aptitude or any other basis that would be illegal if used by a school district (24 P.S. §17-1723-A(b)(1)). After due consideration of the School Board's findings with regard to New Hope's actions surrounding the admission of students, including requesting student educational and other records prior to enrollment in order to inform New Hope's enrollment decisions, CAB agrees with the School Board's findings that New Hope's admission policies as they have been and are being implemented violate New Hope's charter in a material way.

VI. NEW HOPE HAS VIOLATED OTHER PROVISIONS OF LAW FROM WHICH IT HAS NOT BEEN EXEMPTED, INCLUDING THE CHARTER SCHOOL LAW AND OTHER LAWS APPLICABLE TO CHARTER SCHOOLS. 24 P.S. §17-1729(A)(5).

A. New Hope Is Violating 22 Pa. Code §11.11 (B) regarding Its Enrollment of Students

A public school entity, such as New Hope, is not permitted to delay enrollment of a student until after it receives academic, disciplinary and/or special education records from the transferring school. 22 Pa. Code §11.11 (b). As discussed more fully above, CAB agrees with the School Board's findings that based on New Hope's own admissions, it is violating student enrollment laws of the Commonwealth.

B. New Hope Has Violated the Laws Governing Alternative Education for Disruptive Youth Programs

Public school entities, which include charter schools, are permitted to place disruptive students into alternative education placements in accordance with state law. 24 P.S. §§ 19-1901-C *et seq.* and 19-1901-E *et seq.*; 22 Pa. Code §11.6. Students who are enrolled in approved Alternative Education for Disruptive Youth (AEDY) programs also remain enrolled in the public/charter school in which they had been placed. The General Assembly authorized PDE to create guidelines that address AEDY programming. Drew Schuckman, state coordinator for the AEDY programs since 2006, stated that the purpose of requiring an entity to submit an application to PDE for approval prior to placement of a student in an AEDY program is to ensure that the entity placing the child has in place procedures to protect students' due process rights, to require behavioral assessments, to provide counseling, to protect students with disabilities, and to provide periodic review of placements because the placements are meant to be temporary.

Record at Exhibit C, 2/23/12 N.T. 28-31.

Mr. Schuckman, who administers the program for PDE, also testified that any school entity that wants to place a student in an AEDY program must be approved by PDE prior to placement because without such approval, the placing school may be violating the instructional hours, curriculum, and teacher certification requirements of 22 Pa. Code Chapter 4. Record at Exhibit C, 2/23/12 N.T. 34-35, 38-39; Exhibit J-7, pp. 9, 10.²² CAB agrees with the School Board's findings that the statutes, regulations, and guidelines for AEDY programs require that prior to placement of the student in an approved AEDY program, the placing entity must have approval from PDE. Without that approval, which authorizes an exemption from compliance with instructional hour, curriculum and teacher certification requirements, any placement of students in an AEDY program results in the placing entity, in this case, New Hope, violating Chapter 4 requirements regarding instructional hours, curriculum and teacher certification.

The record establishes that the teaching staff at Challenge Academy, the AEDY program primarily used by New Hope, is not certified in the appropriate subject matter in which they are teaching, and therefore, New Hope has not been meeting the teacher certification requirements under state law for its students. Record at Exhibit C, 2/23/12 N.T. 51-53, 59. In addition, because New Hope does not have PDE approval to send students to Challenge Academy, New Hope has not been exempted from the instructional hours requirements of 990 hours, which minimum number of hours Challenge Academy is not required to meet. Record at Exhibit C, 2/23/12 N.T. 35-39, 58. Moreover, the School Board found that New Hope's Board of Trustees adopted a policy regarding alternative education on May 17, 2007, in which it stated "the CAO or designee shall follow the established alternative education for disruptive youth *grant policy and procedures*." Record at Exhibit K-5, p. 2 (emphasis supplied). Despite this provision in the

²² AEDY program providers receive waivers from teacher certification and hours of instruction requirements; however, those entities that want to place students in AEDY programs are not exempted from these requirements until they are approved by PDE through an application process. Record at Exhibit C, 2/23/12 N.T. 35-39.

Board of Trustees' policy, Schoonover, the CAO of New Hope, did not know what policy and procedures were being referenced and never asked the Board what the provision meant. Record at Exhibit E, 3/1/12 N.T. 55-56. Further, the Board of Trustees' policy does not contain any references to the due process requirements required to be afforded to students prior to placement in an AEDY placement. *Id.*

New Hope argues that its placement of students into Challenge Academy's AEDY program these past five years without PDE approval did not violate any actual law. New Hope argues that the statutory provisions creating the AEDY programs require application only from those entities that are seeking funds to provide the AEDY programs, not from those entities seeking only to place students in the AEDY programs, such as New Hope. 24 P.S. §§19-1901-C *et seq.* through 19-1901-E *et seq.*, reproduced at Record at Exhibit K-48. Therefore, it argues, this cannot be considered a violation of a law justifying nonrenewal of New Hope's charter. New Hope is in error.

In the five-year contract that New Hope entered into on April 24, 2007, with Three Cord Youth Services d/b/a Challenge Academy, New Hope agreed and warranted that it will "be and remain in compliance with Act 30, Act 48, 2003/2008 Guidelines regarding Private Alternative Education Institutions or any other requirements issued by the Commonwealth of Pennsylvania, Department of Education, or any other applicable statute or ordinance regarding all aspects of the Act 48 program referenced herein."²³ Record at Exhibit K-3, pp. 2-3. Moreover, throughout the contract, references are made to the PDE-issued AEDY guidelines. *Id.* at 3-6, 8. Thus, New Hope has agreed to abide by the guidelines and any other requirements of the law with regard to AEDY programs in its contract with Challenge Academy. It is therefore disingenuous for New

²³ Act 30 and Act 48 are references to the legislation that enacted and subsequently amended 24 P.S. §§ 19-1901-C, *et seq.* and 19-1901-E, *et seq.*

Hope to argue that it was not required to seek approval from PDE prior to placing students in Challenge Academy's AEDY program, and CAB rejects that argument.

The record establishes that New Hope, without approval from PDE, placed the following numbers of students in the AEDY program at Challenge Academy: in the 2008-2009 school year, between 8 and 17 students, depending upon the month; in the 2009-2010 school year, between 14 and 30 students, depending upon the month; in the 2010-2011 school year, between 20 and 41 students, depending upon the month; in the 2011-2012 school year through January, between 34 and 48 students, depending upon the month; and as of March 1, 2012, 42 students were placed by New Hope at Challenge Academy. Record at Exhibit D, 2/29/12 N.T. 111-136; Exhibit E, 3/1/12 N.T. 5-16, 17; Exhibit J-35. New Hope did so without the approval of PDE and in violation of the provisions of the law from which it had not been exempted.

CAB agrees with the School Board's finding that because New Hope did not obtain approval from PDE to send students to Challenge Academy's AEDY program for the five years during which New Hope utilized Challenge Academy's AEDY program, New Hope has violated the AEDY laws, as set forth above, as well as the days/hours, teacher certification and curriculum requirements set forth in 22 Pa. Code Chapter 4.²⁴

²⁴ New Hope argues that this issue is now moot because it has submitted to PDE an application for approval to send its students to an AEDY program, which application New Hope claims has been approved. *See* New Hope's July 26, 2013 Motion to Supplement the Record, or in the Alternative, Request to Take Official Notice of Public Document under Section 17-1729-A(d). Even had CAB admitted these documents into evidence, as discussed above, at pp. 19-20, this supplemental information does no more than show that New Hope is now attempting to comply with the law by seeking approval from PDE to send students to an AEDY program. The supplemental information does not in any way establish that New Hope has been approved. Further, the fact that New Hope may have now taken remedial action to meet its responsibilities under the law does not negate the violations New Hope has been committing during these last five years of its operation.

C. New Hope has violated Laws Governing Truancy and Student Attendance Reporting

Charter schools are required to enforce the compulsory attendance requirements found in 24 P.S. §§13-1327 and 13-1332. *See* 24 P.S. §17-1732-A(a). Despite that obligation, the record evidence establishes that New Hope consistently failed to provide timely reports of student attendance/truancy to the School District, in order that the district may take appropriate enforcement steps. In fact, the School District's attendance supervisor visited New Hope on five or six occasions and had numerous phone calls with individuals at New Hope in an attempt to get New Hope to follow protocol and procedures in timely reporting student attendance/truancy to the School District. Record at Exhibit D, 2/29/12 N.T. 5-7, 26. Even after meeting with representatives of New Hope, New Hope's attendance reporting problems did not improve. *Ibid.* at 19.

The School District presented testimony from the high school attendance officer who referenced and provided examples of many records received from New Hope where unlawful absences had been reported more than a month, and in some cases more than six months, after the student's third unlawful absence, or the equivalent thereto. Record at Exhibit J-30, J-33; Exhibit F, 3/6/12 N.T. 8-36. The School District asserted that the reason these delays create a problem is that the School District is dependent on New Hope to advise it of student's unlawful absences so that the School District can send out the required legal notices to students, parents and/or guardians. Moreover, he explained that when truancy or attendance problems are not promptly reported to the School District, the School District is delayed in taking action to try to get the students back to school. Record at Exhibit D, 2/29/12 N.T. 7-8, 11-13, 18. The result is obvious. If students are not in school, then students are not improving their learning or taking advantage of the learning opportunities which New Hope is supposed to be providing.

The School Board concluded that New Hope's failure to timely report student attendance/truancy to the School District was a failure to comply with the compulsory attendance and truancy laws and procedures of the Commonwealth. Specifically, the School Board found that New Hope had a vested interest in ensuring that its enrolled students were attending school, particularly, since its students were not making AYP. The School Board found a several month delay in the reporting of unlawful absences would not help New Hope to improve the academic performance of its students. Record at Exhibit S, pp. 71-72.

In response, New Hope argues that nothing in the law requires New Hope to report absences of three days or more "at once" as set forth in 24 P.S. §13-1332. Specifically, New Hope argues that it is exempted as a public school from this "at once" reporting. Further, New Hope argues that nothing in the law requires it to "timely report" absences/truancy to the School District. New Hope argues that because the BEC governing compulsory attendance and truancy elimination plans is not binding and does not have the force of law, it cannot be found to be in violation of it. Therefore, New Hope argues that the School Board incorrectly found that New Hope violated the law related to its student attendance/reporting requirements. New Hope's Brief, pp. 23-25.

CAB rejects New Hope's position that it is not required to timely report to the School District any child who has been absent three days, or the equivalent, during the term of compulsory attendance, without lawful excuse. 24 P.S. §13-1332. In contrast, CAB agrees with the findings of the School Board that a several month delay in the reporting of unlawful absences establishes New Hope's failure to comply with the compulsory attendance and truancy laws and procedures of this Commonwealth, justifying nonrenewal of its charter.²⁵

²⁵ New Hope argues that the York School Board failed to credit the undisputed testimony from Schoonover that New Hope is currently adhering to the district's policies, and is now sending monthly attendance reports to the

D. New Hope's Public Officials and Public Employees Have Failed to File Statements of Financial Interest in Violation of the Law

Section 1715-A and 1727-A of the CSL impose upon a charter school's Board of Trustees, and certain charter school employees, the same responsibilities and standards for ethical conduct as are expected of school district directors and other public officials. *See* 24 P.S. §§17-1715-A(11), 17-1727-A. As such, each member of the Board of Trustees of the charter school is subject to the financial interest disclosure requirements of the Ethics Act, 65 Pa.C.S. §1101, *et seq.*, which mandates that all public officials and certain public employees submit Statements of Financial Interest by May 1 of each year. 65 Pa.C.S. §1104 (a); *see also* 24 P.S. §17-1715-A(12). CAB has held "failure to comply with State Ethics Act requirements is a serious violation and, *in conjunction with other serious violations*, constitutes grounds for charter revocation." *Renaissance, supra*, CAB Docket No. 2008-07, pp. 13-14 (emphasis supplied).

New Hope does not dispute that some Statements of Financial Interest have not been filed. In fact, the record here establishes that during the years 2007 through 2010, fifteen (15) members of New Hope's Board of Trustees and other high-ranking administrators of New Hope appear to have failed to file Statements of Financial Interest as required by the Ethics Act.²⁶

Rather, New Hope argues that since there are no other serious violations in this case, the failure

district with each monthly bill, in response to a February 2011 request from the School District. New Hope's Brief, p. 25. New Hope is in error. Schoonover's testimony is not undisputed. Rather Shropshire, the School District's attendance officer, testified at length regarding the many records received from New Hope where unlawful absences were not reported in a timely manner. Many of these records covered time periods following February 2011. *See* Record at Exhibit J-30 (10/20/11-2/1/12), J-33 (12/1/10-6/1/11); Exhibit F, 3/6/12 N.T. 8-36. The School Board noted that New Hope did not present any records that disputed the records identified by Shropshire during her testimony. Record at Exhibit S, Finding of Fact 109. This record evidence clearly places in dispute Schoonover's testimony that New Hope has been adhering to the district's policies since February 2011. After reviewing the testimony and records, CAB finds the testimony of Shropshire to be more credible than the testimony of Schoonover.

²⁶ Based on the record CAB finds that the School Board's Finding of Fact No. 168 is in error. Based on CAB's review of Exhibit O, (emails of counsel for the parties and affidavit of Rebecca Perez), and other parts of the record, Record at Exhibit J-37, J-41, there is no evidence the following 15 Statements of Financial Interest were filed between 2007 and 2010: 2007-Jennifer Washburn and Isaiah Anderson; 2008-David Graybill, John Eyster, Stephen Mitchell, Jennifer Washburn, Isaiah Anderson, and Samuel Sutton; 2009-David Graybill, Isaiah Anderson, and Samuel Sutton; 2010-Stephen Mitchell, John Eyster, Adrian Boxley, and Robert Cooper. Record at Exhibit O.

to file 15 Statements of Financial Interest over four (4) years does not justify the nonrenewal of New Hope's charter. CAB disagrees.

New Hope's violations of its charter, the CSL, mandated standards of student Academic performance found in 22 Pa. Code Chapter 4, as well as other provisions of the laws from which New Hope has not been exempted, are serious matters. After a review of the entire record, these ethical and fiduciary failures rise to the level of serious violations when viewed in conjunction with the other violations discussed herein. Therefore, CAB agrees with the School Board's findings that in this case the failure of the Board of Trustees and other public officials and public employees to submit Statements of Financial Interest pursuant to the Ethics Act supports the School Board's decision not to renew New Hope's charter. See 24 P.S. §17-1729-A(a)(5).

E. Persons Associated with New Hope Have Violated the Ethics Act, the Nonprofit Corporation Law, and New Hope's Own Conflict of Interest Policy

The School Board found additional grounds for nonrenewal concerning the governance of New Hope and the influence that Anderson has had and continues to have on the school. The School Board found that New Hope was created by and for Anderson and the companies that he owns. Record at Exhibit E, 3/1/12 N.T. 63, 66-69. The School Board found that Anderson has exercised and still exercises significant influence and control over New Hope's Board of Trustees. Record at Exhibits E, 3/1/12 N.T. 114; J-26; J-45. For example, upon the initial Board of Trustees meetings for New Hope, the Board of Trustees approved, without question, many of New Hope's initial contracts, all of which were with companies owned and/or operated by Anderson. Record at Exhibit E, 3/1/12 N.T. 23, 74-75; J-36; K-14. Further, the minutes of New Hope's initial Board meeting failed to reflect whether Anderson disclosed his affiliations with any of the companies with which New Hope was proposing to contract, whether these contracts were negotiated at arm's length and whether Anderson recused himself from any discussion of or

voting on approval of the contracts. The minutes of the Board of Trustees simply reflect that the Board approved those contracts in the form in which they were given to them by Anderson. Record at Exhibit F, 3/6/12 N.T. 141-145.

In addition, the School Board found that while Anderson does not draw a salary from New Hope and is not directly employed by it, for all intents and purposes he is New Hope's highest-ranking administrator. Anderson is listed as the managing director on all of New Hope's minutes and letterhead. Anderson evaluates New Hope's CAO and is involved in all contracting decisions. Anderson attends New Hope's Board of Trustees meetings, participating in the meetings and, at times, giving the treasurer's report. Anderson, through Three Cord, Inc., administers the recruitment, screening and interviewing processes for all personnel for New Hope. *See generally* Record at Exhibit E, 3/1/12 N.T. 58, 63, 66, 73, 85-93, 102-103; K-8; K-38; K-39; K-40.

The School Board found that Anderson personally benefited from the creation of New Hope and the contracts that New Hope's Board of Trustees awarded to Anderson's for-profit corporations. These contracts were awarded by the Board without performing due diligence in the nature of determining the terms and conditions contained in the contracts, including the monetary impact on New Hope. Specifically, John Eyster, the Vice President of New Hope's Board of Trustees since its inception, testified that during the initial meeting of New Hope's Board of Trustees on April 24, 2007, he did not read the Management Agreement between New Hope and Three Cord, Inc. "word for word" prior to voting for its approval, and he was not aware of several of the terms of the original Management Agreement. *See generally* Record at Exhibit F, 3/6/12 N.T. 141-150; J-36; J-48.

Specifically, Eyster was not aware that the Management Agreement contained a 50/50 annual net income split between New Hope and Three Cord; and that upon termination or expiration of the management agreement New Hope was required to pay to Three Cord, Inc., of which Anderson is the sole owner, each year for ten (10) years thereafter a \$300 per pupil fee for each pupil enrolled in New Hope at the time of the termination of the agreement. In addition, Eyster admitted that the Board of Trustees voted on New Hope's contract with Challenge Academy to send students there for its AEDY program before any student had even been enrolled by New Hope. Eyster admitted that he did not feel that, as part of the Board of Trustees, he performed the required due diligence when the Board entered into the original Management Agreement with Three Cord, Inc. *See generally* Record at Exhibit F, pp. 141-177.

In addition, Eyster testified that he believed that the Amended and Restated Management Agreement between New Hope and Three Cord, Inc., adopted by the Board on November 10, 2011, did **not** contain the 50/50 annual net income split, the 10% interest rate for late fees and expenses advanced, the mandatory requirement that New Hope purchase certain equipment and property upon the termination of the Amended Management Agreement, or the \$300 per pupil payment for 10 years upon termination of the charter. Record at Exhibit F, pp. 159-169. The Board had adopted the Amended and Restated Management Agreement unanimously. However, upon review of the Amended Agreement during his testimony before the School Board, Eyster discovered that the Amended Agreement **did** contain the terms and provisions that Eyster believed had been removed or changed. *See generally* Record at Exhibit F, pp. 157-177; Exhibit J-46.

Despite the fact that the Ethics Act and New Hope's own Conflict of Interest Policy require the disclosure of potential conflicts of interests (which would include disclosing entering

into a contract for the private pecuniary benefit of oneself or a business with which one is associated), there is no credible evidence in the record that Anderson ever revealed such conflicts to the Board of Trustees with regard to their votes in April 2007 or in November 2011 on the contract, agreements or leases into which they entered on behalf of New Hope. A review of the minutes of the Board of Trustees' meetings reveals no such disclosures. Further, there is no documentation in the minutes that Anderson did not participate in the discussions related to the approval of the contracts with his companies. Eyster's testimony in this regard supports the School Board's conclusion that New Hope's Board of Trustees "simply approved contracts in the form given to them by Anderson." Record at Exhibit S, p. 73.

New Hope argues that the lack of a notation in the record of the minutes does not mean such disclosures failed to occur. This position must be rejected. New Hope's own Conflict of Interest Policy requires that the minutes "contain the names of the persons who disclosed or were found to have a financial interest, the steps taken by the Board to determine whether a conflict of interest was present and the decision on whether a conflict of interest existed." Record at Exhibit J-3, p. 147. Further, the Ethics Act requires public disclosures of conflicts of interest, 65 P.S. §1103(f), as does the Non-Profit Corporation Act, 15 Pa.C.S.A. §5712(a). The only evidence to which New Hope points in refutation of the School Board's findings regarding conflict of interest and violations of the Ethics Act and Non-Profit Corporation Law is Anderson's own testimony. However, after reviewing that testimony, CAB finds Anderson's self-serving statements not credible.

In addition, the lease arrangements which New Hope's Board of Trustees entered into with I. Anderson Real Estate for the various properties owned by Anderson and leased by New Hope, reveal that in addition to paying a monthly fee of \$16,500 to lease property at 459 West

King St., the site of the New Hope school, New Hope agreed to pay for \$151,692.71 in renovations which had already occurred at the site, despite the fact that the original Management Agreement between New Hope and Three Cord, Inc. provided that Three Cord, Inc. was responsible for carrying out all repairs and construction at school facilities which Anderson owned through I. Anderson Real Estate. Record at Exhibit 7, pp. 22-23 of New Hope's 5/31/13 Motion to Supplement.²⁷

On April 14, 2010, Anderson, on behalf of Three Cord, Inc., entered into a Memorandum of Understanding (hereinafter "MOU") with New Hope regarding two properties: 451 West King St. and 600 N. Hartley Street, Suites 170 and 140. Record at Exhibit J-44. I. Anderson Real Estate owns 451 West King St. The evidence in this case establishes that under the MOU, New Hope is permitted to use space at 451 West King St. in exchange for incurring the cost of all utilities and operating expenses on that property. In addition, Challenge Academy has been invoicing New Hope for payment of the real estate taxes and utilities for the property located at 451 West King St. Record at Exhibits J-44, J-35. Eyster testified that he did not recall the MOU ever having been approved by the Board of Trustees at a public meeting; nor was he aware of any action by the Board to pay for any expenses associated with the property at 451 West King St. Record at Exhibit F, 178-179. The MOU does not disclose all of the interrelationships between the entities using the spaces at the properties involved, or why New Hope is essentially bearing all of the operating costs for that space when Anderson's other companies are benefiting from the use of the space.

²⁷ New Hope's Board's lack of due diligence and Anderson's *de facto* control of the Board are also seen in the adoption of the new twenty-year lease agreement on November 10, 2011. Although Eyster believed that the Amended Lease contained certain provisions, including the option to terminate after five (5) years, he found that this and other provisions he thought were in it were missing from the Amended Lease as adopted by the Board, when he reviewed that lease at the hearing. Record at Exhibits F 3/16/12 N.T. 166, 176-77; K-9, K047.

There is substantial evidence in the record that Anderson has personally benefited from the contracts his companies have with New Hope. It is clear from the record that Anderson exercises significant, if not *de facto*, authority over the charter school. Yet in this position, Anderson has failed to fulfill his fiduciary duties to New Hope, as discussed above. The record also reveals that the Board of Trustees did not fulfill its fiduciary duties with regard to the contracts it entered into with Anderson or his companies, many of which were not negotiated at arm's length and were not understood prior to approval. Further, the Board of Trustees violated the provisions in its own Conflict of Interest policy. The Board of Trustees has not operated New Hope properly, but rather has, in the oversight of New Hope, violated the Ethics Act, the Non-Profit Corporation Law, and the CSL. CAB finds that Anderson and the Board of Trustees of New Hope have violated their fiduciary duties and responsibilities to New Hope in violation of the law. In addition to the findings made herein, CAB has given due consideration to the findings of the School Board; and for the reasons specifically articulated above, agrees with and adopts the findings of the School Board.

CONCLUSION

After giving due consideration to the findings of the School Board, in addition to the specific factual findings set forth in the School Board's Adjudication, CAB incorporates by reference as though fully set forth herein all the factual findings set forth in the School Board's Adjudication, Nos. 1 through 167 and 169 through 203, but not No. 168. Record at Exhibit S, pp. 1-51. CAB has specifically articulated its reasons for agreeing with these findings in the discussion above. Based upon the foregoing analysis, CAB finds that the record does support the School Board's nonrenewal of New Hope's Charter. Accordingly, the following Order will issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
STATE CHARTER SCHOOL APPEAL BOARD**

**New Hope Academy Charter School,
Petitioner**

v.

**City of York School District,
Respondent**

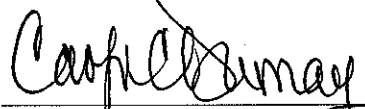
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Docket No. 2012-13

ORDER

AND NOW, this 29th day of OCTOBER, 2013, based upon the foregoing and the vote of this Board²⁸, the appeal of New Hope Academy Charter School is **DENIED**. This decision will become effective as of January 15, 2014 in order that the students enrolled in New Hope Academy Charter School may complete the fall term of the 2013-2014 school year. At that time, the New Hope Academy Charter School is directed to dissolve as provided for in the Charter School Law.

For the State Charter School Appeal Board



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Date Mailed: 10/29/13

²⁸ At the Board's meeting of October 15, 2013 the Board voted to deny the appeal by a vote of 6-0 with Board Members Barker, Dumaresq, Lawrence, Munger, Yanyanin and Magnotto voting.